

E-Filed 3/7/07

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

RICARDA SORIA,

Petitioner,

V.

GLORIA HENRY,

Respondent.

Case Number C 06-4074 JF

**ORDER GRANTING APPLICATION
FOR CERTIFICATE OF
APPEALABILITY**

Petitioner has filed an application for certificate of appealability. The application is
NTED. This Court dismissed the petition as an unauthorized second or successive petition
unt to 28 U.S.C. § 2244(b). However, the Court noted that Petitioner’s first federal habeas
n was dismissed as time-barred, and that the Court of Appeals for the Ninth Circuit has not
y addressed whether a dismissal based upon the statute of limitations constitutes an
cation on the merits for purposes of determining whether a subsequent petition is
sive. While this Court answered this question in the affirmative, reasonable jurists could

1 differ. If this Court erred in concluding that the instant petition is an unauthorized second or
2 successive petition, then the dismissal of Petitioner's claims for lack of jurisdiction was
3 erroneous.

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DATED: 3/7/07

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A handwritten signature in blue ink, appearing to read "JEREMY FOGEL". Below the signature, the name "JEREMY FOGEL" is printed in a standard black font, followed by "United States District Judge".

1 Copies of this Order were served on the following persons:

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